

**GENERAL PROVISIONS FOR  
TEXAS DEPARTMENT OF HEALTH INTERAGENCY GRANT CONTRACTS**

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**EXHIBIT 1 (IF APPLICABLE)**

**ADDITIONAL PROVISIONS FOR SUBRECIPIENT CONTRACTS  
FOR PURCHASE OF CLIENT SERVICES**

- PROGRAM INCOME
- CHILD ABUSE REPORTING REQUIREMENTS
- CONSENT TO TREATMENT FOR MINORS
- CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION
- SANCTIONS
- SANCTION REVIEW

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Any alteration to this document constitutes a *counter-offer* and must be approved in writing by the Texas Department of Health.

**GENERAL PROVISIONS FOR  
TEXAS DEPARTMENT OF HEALTH INTERAGENCY CONTRACTS**

**ARTICLE 1. Preamble**

PERFORMING AGENCY and RECEIVING AGENCY (the parties) agree to make and enter into this grant contract (contract), to faithfully perform the duties prescribed by this contract, and to uphold and abide by its terms and provisions. This contract consists of:

- RECEIVING and PERFORMING AGENCY identifying data,
- Details of Attachment(s),
- authorized signatures,
- General Provisions, and
- Attachment(s).

Attachments may include the following elements as applicable:

- detailed Scope(s) of Work,
- Special Provisions,
- budget(s), and
- exhibit(s).

This contract represents the complete and entire understanding and agreement of the parties. No prior agreement or understanding, oral or otherwise, of the parties or their agents will be valid or enforceable unless embodied in this contract. The terms “shall” and “will” are used interchangeably in this contract.

The person or persons signing and executing this contract on behalf of PERFORMING AGENCY, or representing themselves as signing and executing this contract on behalf of PERFORMING AGENCY, warrant and guarantee that he, she, or they have been duly authorized by PERFORMING AGENCY to execute this contract for PERFORMING AGENCY and to validly and legally bind PERFORMING AGENCY to all of its terms, performances, and provisions.

PERFORMING AGENCY assures compliance with this contract, including these General Provisions unless otherwise specified in any Special Provisions of the Attachment(s) to this document. If the General Provisions are revised or replaced during the term of this contract, and PERFORMING AGENCY does not consent to comply with the modified General Provisions, PERFORMING AGENCY may exercise its termination options in accordance with the General Provisions, Termination Article.

**ARTICLE 2. Statement of Services to be Performed**

The services or resources to be provided are described in the contract Attachment(s) hereto. “Services” means special or technical services, including the services of employees. “Resources” means materials and equipment.

**ARTICLE 3. Term**

The term (time period) of this contract shall be governed by the term(s) of the Attachment(s). No commitment of contract funds is permitted prior to the first day or subsequent to the last day of the term. The term may be renewed, extended or shortened by amendment(s).

**ARTICLE 4. Terms and Conditions of Payment**

RECEIVING AGENCY shall pay for services received from appropriation items or accounts of RECEIVING AGENCY from which like expenditures would normally be paid, based upon vouchers drawn by RECEIVING AGENCY payable to PERFORMING AGENCY. Payment received by PERFORMING AGENCY shall be credited to its current appropriation item(s) or account(s) from which the expenditures of that character were originally made.

Payments will be made only upon completion and acceptance of work as reflected in the applicable contract Attachment. No payment will be made for incomplete portions of the contract Attachment(s) unless the incomplete performance is at RECEIVING AGENCY'S request. If RECEIVING AGENCY requests incomplete performance,

RECEIVING AGENCY will reimburse PERFORMING AGENCY for actual costs and any noncancellable commitments incurred in the performance of an Attachment.

PERFORMING AGENCY shall have incurred a cost within the applicable Attachment term to be eligible for reimbursement under this contract and prior to claiming reimbursement. PERFORMING AGENCY shall submit requests for reimbursement on a State of Texas Purchase Voucher (TDH Form B-13) or any other form designated by RECEIVING AGENCY monthly within thirty (30) days following the end of the month covered by the bill. PERFORMING AGENCY shall submit a reimbursement request as a final close-out bill not later than ninety (90) days following the end of the applicable Attachment term(s) for goods received and services rendered during the Attachment term. Reimbursement requests received in RECEIVING AGENCY'S offices more than ninety (90) days following the end of the applicable Attachment term will not be paid. If necessary to meet this deadline, PERFORMING AGENCY may submit reimbursement request by facsimile transmission. Consideration of requests for an exception will be made on a case-by-case basis and only for an extenuating circumstance such as a catastrophic event, natural disaster, or criminal activity that substantially interferes with normal business operations, or causes damage or destruction of the place of business and/or records. A written statement describing the extenuating circumstance and the last request for reimbursement must be submitted for review and approval to the RECEIVING AGENCY Program sponsoring the Attachment.

PERFORMING AGENCY shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting cash payments including advance payments from RECEIVING AGENCY.

**ARTICLE 5. Termination**

This contract may be terminated by mutual agreement of both parties.

Either party may terminate one or more of the Attachment(s) by giving the other party thirty (30) days written notice of its intent to terminate. Written notice shall be sent by any method which provides verification of receipt, and the thirty (30) days will be calculated from the date of receipt.

An Attachment may be terminated for cause by either party for breach or failure to perform an essential requirement of the Attachment.

**ARTICLE 6. Certification**

The parties certify that: (1) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the parties; (2) the proposed arrangements serve the interest of efficient and economical administration of the State Government; and (3) the services, supplies or materials contracted for are not required by Section 21 of Article 16 of the Constitution of Texas to be supplied under contract given to the lowest responsible bidder.

**ARTICLE 7. Statutory and Regulatory Compliance Requirements**

PERFORMING AGENCY agrees to comply with the Uniform Grant Management Act (UGMA), Texas Government Code, Chapter 783, as amended, and the Uniform Grant Management Standards (UGMS) as amended by revised federal circulars and incorporated in UGMS by the Governor's Budget and Planning Office apply as terms and conditions of this contract. The UGMA is located on the Internet at

<http://www.capitol.state.tx.us/statutes/statutes.html>; the UGMS are located on the Internet at <http://www.governor.state.tx.us/stategrants/>. Where the provisions of PERFORMING AGENCY'S own statutory and regulatory requirements conflict with the UGMS incorporated herein, then PERFORMING AGENCY'S statutory and regulatory requirements shall govern.

The parties shall comply with the applicable assurances prescribed in UGMS, Part III, "State Uniform Administrative Requirements for Grants and Cooperative Agreements," Subpart B-Pre-Award Requirements, item \_\_\_\_\_.14-State Assurances.

If applicable, the parties shall also comply with the following:

- The National Research Service Award Act of 1971, 42 USC §§289a-1 *et seq.*, as amended, and 6601 (P.L. 93-348 and P.L. 103-43), as amended, regarding the protection of human subjects involved in research, development, and related activities supported by any applicable award of federal assistance, as implemented by 45 CFR Part 46, Protection of Human Subjects.
- The Clinical Laboratory Improvement Amendments of 1988, 42 USC §263a, as amended, which establish federal requirements for the regulation and certification of clinical laboratories.
- Occupational Safety and Health Administration Regulations on Blood Borne Pathogens, 29 CFR §1910.1030, which set safety standards for those workers and facilities in the private sector who may handle blood borne pathogens, or Title 25 Texas Administrative Code TAC), Chapter 96, which affects facilities in the public sector.
- Immigration Reform and Control Act of 1986, 8 USC §1324a, as amended, regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, who will perform any labor or services under this contract.
- Texas ~~Revised Civil Statutes—Ann. Article 9102 (Vernon Supp. 2002)~~ **Government Code, Chapter 469**, as amended, pertaining to standards which eliminate architectural barriers for persons with disabilities.
- Health and Safety Code, ~~§~~ **Chapter** 165, relating to the rights of mothers to breast-feed and the promotion of breast-feeding. RECEIVING AGENCY will support PERFORMING AGENCY in complying by providing promotional material and information that encourages breast-feeding to program participants who are pregnant women or mothers with infants. Promotional material may be requested from RECEIVING AGENCY by calling (512) 458-7796; and
- RECEIVING AGENCY Policy XO-0119, Non-Discrimination Policies and Procedures for TDH Programs, relating to nondiscrimination in the delivery of contracted services on the basis of race, color, national origin, religion, age, sex, sexual orientation or disability. The policy is located on the Internet at <http://www.tdh.state.tx.us/oto/xo-0119.htm>.

#### **ARTICLE 8. Allowable Costs and Audit Requirements**

Only those costs allowable under UGMS and any revisions thereto plus any applicable federal cost principles are eligible for reimbursement under this contract. Applicable cost principles, audit requirements, and administrative requirements are as follows:

<b>Applicable Cost Principles</b>	<b>Audit Requirements</b>	<b>Administrative Requirements</b>
OMB Circular A-87, State, Local and Tribal Governments	OMB Circular A-133 and UGMS	UGMS
OMB Circular A-21, Educational Institutions	OMB Circular A-133 and UGMS	OMB Circular A-110

**ARTICLE 9. Miscellaneous Provisions**

- A. Amendment. Any amendments or supplements to this contract shall be in writing and signed by individuals with authority to bind the parties.
- B. Non-assignable. This contract cannot be transferred or assigned.
- C. Subcontracts. PERFORMING AGENCY may subcontract and purchase the services and resources.
- D. Severability. If any provision of this contract is found to be illegal or invalid, it will be severed from the contract and the remaining provisions will remain in effect.
- E. Funding. This contract is contingent upon the availability of funding for the term of the Attachment(s).
- F. Corrections and Revisions to Work. RECEIVING AGENCY may require PERFORMING AGENCY to correct or revise any errors, omissions or other deficiencies in any reports or services provided by PERFORMING AGENCY to ensure that such reports and services fulfill the purposes of the Attachment(s). PERFORMING AGENCY shall make the required corrections or revisions without additional cost to RECEIVING AGENCY.

**ARTICLE 10. Reports**

PERFORMING AGENCY shall submit financial, program, progress, and other reports requested by RECEIVING AGENCY in the format agreed to by the parties. PERFORMING AGENCY shall provide RECEIVING AGENCY other reports RECEIVING AGENCY determines necessary for the accomplishment of the objectives of the Attachment(s) and to monitor compliance. If PERFORMING AGENCY is legally prohibited from providing such reports, it shall immediately notify RECEIVING AGENCY.

If applicable, PERFORMING AGENCY shall submit a Financial Status Report, State of Texas Supplemental Form 269A (TDH Form GC-4a) within thirty (30) days following the end of each of the first three (3) quarters. PERFORMING AGENCY shall submit a final financial report on TDH Form GC-4a not later than ninety (90) days following the end of the Attachment term(s). Reports shall be submitted regardless of whether or not expenses have been incurred. PERFORMING AGENCY shall submit a State of Texas Purchase Voucher with the final financial report if all costs have not been recovered, or PERFORMING AGENCY shall refund excess monies if costs incurred were less than funds received.

**ARTICLE 11. Inspections**

RECEIVING AGENCY and, when federal funds are involved, any authorized representative(s) of the federal government have the right, at all reasonable times, to inspect or otherwise evaluate the work performed by PERFORMING AGENCY and its subrecipients and/or subcontractors. PERFORMING AGENCY and its subrecipients and/or subcontractors, if any, shall participate in inspections and provide reasonable access, facilities, and assistance to the representatives. All inspections and evaluations will be performed in such a manner as will not unduly interfere with the work.

PERFORMING AGENCY and its subrecipients and/or subcontractors, if any, shall give RECEIVING AGENCY, the federal government, the State Auditor or any of their duly authorized representatives, access to any pertinent books, documents, and papers of PERFORMING AGENCY for the purpose of making audits, examinations, excerpts, and transcripts of transactions related to this contract. RECEIVING AGENCY will have the right to audit billings both before and after payment.

**ARTICLE 12. Records Retention**

PERFORMING AGENCY and its subrecipients and subcontractors shall retain medical records in accordance with 22 Texas Administrative Code (TAC), Part 9, §165.1(b)(c) or other applicable statutes and regulations governing medical information. PERFORMING AGENCY shall retain and preserve all other records, including financial records, which are generated or collected by PERFORMING AGENCY or its subcontractors under the provisions of this contract, for a period of four (4) years after the termination of the Attachments. If an Attachment is funded

through Medicaid, the federal retention period, if more than four (4) years shall apply. PERFORMING AGENCY and its subrecipients shall retain all records for an Attachment that is the subject of litigation or an audit until the litigation is ended or all questions pertaining to the audit are resolved.

Legal requirements for PERFORMING AGENCY may extend beyond the retention schedules established herein.

### **ARTICLE 13. Intellectual Property**

Texas Health and Safety Code §12.020, as amended, authorizes RECEIVING AGENCY to protect intellectual property developed as a result of this contract.

“Intellectual property” means created property that may be protected under copyright, patent, or trademark/service mark law.

“Work made for hire” is a copyrightable work prepared for RECEIVING AGENCY use, or a work specially ordered or commissioned through a contract for RECEIVING AGENCY use. RECEIVING AGENCY owns works made for hire unless it agrees otherwise by contract.

If federal [or state](#) funds are used to finance activities supported by this Contract that result in the production of original material, the federal [or state](#) awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for federal [or state](#) government purposes (1) the copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright to which a PERFORMING AGENCY or its subrecipient purchases ownership with grant support. PERFORMING AGENCY shall place an acknowledgment of federal [or state](#) awarding agency grant support and a disclaimer, as appropriate, on any publication written or published with such support and, if feasible, on any publication reporting the results of or describing a grant-supported activity. An acknowledgment shall be to the effect that “This publication was made possible by grant number \_\_\_\_\_ from (federal [or state](#) awarding agency)” or “The project described was supported by grant number \_\_\_\_\_ from (federal [or state](#) awarding agency)” and “Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the (federal [or state](#) awarding agency).”

In the event the terms of a federal [or state](#) grant award the copyright to PERFORMING AGENCY, RECEIVING AGENCY reserves a royalty-free, nonexclusive, worldwide and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for RECEIVING AGENCY, public health, and state governmental noncommercial purposes (1) the copyright, trademark, service mark, and/or patent on an invention, discovery, or improvement to any process, machine, manufacture, or composition of matter; products; technology; scientific information; trade secrets; and computer software, in any work developed under a grant, subgrant, or contract under a grant or subgrant; and (2) any rights of copyright, service or trade marks or patents to which a grantee, subgrantee or a PERFORMING AGENCY purchases ownership with grant support.

If the results of the contract performance are subject to copyright law, the PERFORMING AGENCY cannot publish those results without prior review and approval of RECEIVING AGENCY.

### **ARTICLE 14. Overtime Compensation**

PERFORMING AGENCY shall not use any of the funds provided by the Attachment(s) to pay the premium portion of overtime. PERFORMING AGENCY shall be responsible for any obligations of premium overtime pay due employees. Premium overtime pay is defined as any compensation paid to an individual in addition to the normal rate of pay for hours worked in excess of normal working hours.

### **ARTICLE 15. Equipment and Supplies**



In accordance with Health and Safety Code, §12.053, title to all equipment and supplies purchased with funds from this contract shall be in the name of PERFORMING AGENCY throughout the contract Attachment(s) term(s) or until the contract Attachment is terminated.

Equipment is defined as tangible nonexpendable personal property with an acquisition cost of more than \$1,000 and a useful life of more than one year, with the following exceptions: fax machines, stereo systems, cameras, video recorder/players, microcomputers, software, printers, microscopes, oscilloscopes, centrifuges, balances, and incubators. If the unit cost of these exception items is more than \$500, they will be considered equipment, shall be approved for purchase by RECEIVING AGENCY, and are considered capital assets for inventory purposes. The acquisition cost is the net invoice unit price of an item of equipment, including the cost of any necessary modifications, attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Supplies are defined as consumable items necessary to carry out the Attachment including medical supplies, drugs, janitorial supplies, office supplies, patient educational supplies, software, and any items of tangible personal property other than those defined as equipment above.

All items of equipment purchased with Attachment funds shall be itemized in the budget. Any changes to the equipment list contained in the budget must be approved in writing by RECEIVING AGENCY. PERFORMING AGENCY will submit a written description including complete product specifications and need justification prior to purchasing any item of unapproved equipment. If approved, RECEIVING AGENCY will notify PERFORMING AGENCY by means of a written amendment or Attachment Change Notice.

PERFORMING AGENCY shall maintain a nonexpendable personal property (equipment) inventory and submit an annual cumulative report (TDH Form GC-11) to RECEIVING AGENCY no later than October 15th of each year. PERFORMING AGENCY shall administer a program of maintenance, repair, and protection of assets under this contract so as to assure their full availability and usefulness. In the event PERFORMING AGENCY is indemnified, reimbursed, or otherwise compensated for any loss of, destruction of, or damage to the assets provided under this contract, it shall use the proceeds to repair or replace said assets. If any item of equipment is no longer needed to perform services under the Attachment(s) or becomes inoperable, PERFORMING AGENCY shall request disposition instructions in writing from RECEIVING AGENCY.

Upon termination or expiration of applicable Attachment(s) that are not renewed, title to any remaining equipment and supplies purchased from funds under this contract reverts to RECEIVING AGENCY. Title may be transferred to any other party designated by RECEIVING AGENCY. RECEIVING AGENCY may, at its option and to the extent allowed by law, transfer the reversionary interest to such property to PERFORMING AGENCY.

PERFORMING AGENCY agrees to comply with Chapters 2151-2157, as amended, of the Texas Government Code, and Chapter 12, Health and Safety Code, and the rules adopted under those Acts when purchasing equipment or supplies.

#### **ARTICLE 16. Contracts with Subrecipients**

PERFORMING AGENCY may enter into contracts with subrecipients unless restricted or otherwise prohibited in specific Attachment(s). Prior to entering into an agreement equaling \$25,000 or 25% of an Attachment, whichever is greater, PERFORMING AGENCY shall obtain written approval from RECEIVING AGENCY.

Contracts with subrecipients shall be in writing and include the following:

- Name and address of all parties;
- A detailed description of the services to be provided;
- Measurable method and rate of payment and total amount of the contract;
- Clearly defined and executable termination clause;
- Beginning and ending dates which coincide with the dates of the applicable Attachment(s) or cover a term within the beginning and ending dates of the applicable Attachment(s);
- Access to inspect the work and the premises on which any of the work is performed, in accordance with the Inspections and Records Retention Articles in this contract;

- All clauses required by state/federal statutes, executive orders, and their implementing regulations; and
- Where applicable, federal statutes and regulations, including federal grant requirements applicable to funding sources, Uniform Grant Management Standards issued by the Governor's Office, applicable Office of Management and Budget Circulars, and applicable Code of Federal Regulations.

PERFORMING AGENCY is responsible to RECEIVING AGENCY for the performance of any subrecipient. PERFORMING AGENCY shall monitor both financial and programmatic performance and maintain pertinent records that will be available for inspection by RECEIVING AGENCY.

PERFORMING AGENCY shall ensure that:

- Subrecipients are fully aware of the requirements imposed upon them by state/federal statutes and regulations including prompt payment of any subcontractors pursuant to Texas Government Code, Chapter 2251, Subchapter D;
- Subrecipients complete required audits; and
- RECEIVING AGENCY is immediately notified in writing of alleged or actual misuse or misappropriation of contract funds by subrecipients.

#### **ARTICLE 17. Contracts for Procurement**

PERFORMING AGENCY may enter into contracts for procurement of goods and services unless restricted or otherwise prohibited in specific contract Attachment(s). PERFORMING AGENCY agrees that it shall be responsible to RECEIVING AGENCY for the performance of any subcontracted activity.

Contracts for procurement of goods and services shall be in compliance with state law.

#### **ARTICLE 18. Certification of Software, Hardware, Firmware and Micro Code Products**

PERFORMING AGENCY certifies that any supplied or supported software, hardware, firmware, and micro code products used individually or together as a system to comply with RECEIVING AGENCY contract requirements shall operate "accurately" in the manner in which they were intended when given a "valid date" containing century, year, month, and day.

For purposes of this Article, "supplied or supported software, hardware, firmware, and micro code products" does not include software supported by RECEIVING AGENCY or an agency of the federal government.

PERFORMING AGENCY is responsible for installing and implementing any versions of any software provided by RECEIVING AGENCY or an agency of the federal government which is used in performance of this contract.

For purposes of this Article,

**Aa)** "accurately" is defined to include the following:

- 1) calculations shall be correctly performed using four-digit year processing;
- 2) functionality-on-line, batch including entry, inquiry, maintenance and updates shall support four-digit year processing;
- 3) interfaces and reports shall support four-digit year processing;
- 4) processing with a four-digit year shall occur without human intervention;
- 5) correct results in forward and backward date calculation spanning century boundaries shall be provided;
- 6) correct leap year calculations shall be performed; and
- 7) processing correct results in forward and backward date calculation spanning century boundaries shall occur;

**Bb)** "date integrity" shall mean all manipulations of time-related data (dates, durations, days-of-week, etc.) shall produce desired results for all valid date values within the application domain;



- Ce)** \_\_ “explicit century” shall mean date elements in interfaces and data storage permit specifying century to eliminate date ambiguity;
- Dd)** \_\_ “extraordinary actions” shall be defined to mean any action outside the normal documented processing steps identified in the product’s reference documentation;
- Ee)** \_\_ “general integrity” shall mean no value for current date will cause interruptions in desired operation;
- Ff)** \_\_ “implicit century” shall mean for any data element without century, the correct century is unambiguous for all manipulations involving that document;
- Gg)** \_\_ “product” or “products” shall be defined to include, but is not limited to, any supplied or supported hardware, software, firmware and/or micro code;
- Hh)** \_\_ “valid date” shall contain a two-digit month, a two-digit day and a four-digit year.

PERFORMING AGENCY and its subrecipient(s) shall obtain a warranty from any vendor/licensor from which it obtains product(s), that product(s) delivered and installed under the contract/license shall accurately process valid date data when used in accordance with the product documentation provided by the contractor/licensor and require no extraordinary actions on the part of PERFORMING AGENCY, its personnel, or its subrecipient(s). Products under the contract/license shall possess general integrity, date integrity, explicit and implicit century capabilities. If the contract/license requires that specific products shall perform as a system in accordance with the foregoing warranty, then the warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to PERFORMING AGENCY or its subrecipient(s) for breach of the warranty shall be defined in, and subject to, the terms and conditions of the contractor’s standard commercial warranty or warranties contained in the contract/license; provided, that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to PERFORMING AGENCY or its subrecipient(s) shall include repair or replacement of any supplied product if its noncompliance is discovered and made known to the contractor/licensor in writing within ninety (90) days after final acceptance. Nothing in the warranty shall be considered to limit any rights or remedies PERFORMING AGENCY or its subrecipient(s) may otherwise have under the contract/license.

RECEIVING AGENCY will not hold PERFORMING AGENCY responsible if the information coming to PERFORMING AGENCY’S product/software from RECEIVING AGENCY is inaccurate or corrupt.

#### **ARTICLE 19. Survival of Terms**

Termination or expiration of this contract for any reason shall not release either party from any liabilities or obligations set forth in this contract that (a) the parties have expressly agreed shall survive any such termination or expiration, or (b) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

#### **ARTICLE 20. Subrecipient Contracts for Purchase of Client Services**

The General Appropriations Act, Regular Session, 78th Legislature, Article II, Section 10, requires additional items to be included in subrecipient contracts for the purchase of client services. These items are set out in Exhibit 1, if applicable. Performance measures are set out in the contract Attachment(s), where applicable.

## EXHIBIT 1

**ADDITIONAL PROVISIONS FOR SUBRECIPIENT CONTRACTS  
FOR PURCHASE OF CLIENT SERVICES**

**Program Income**

PERFORMING AGENCY may develop a fee-for-service system and a schedule of fees for personal health services in accordance with the provisions of Health and Safety Code §12.031; the Texas Board of Health rules covering Fees for Clinical Services, 25 TAC 1.91; and other applicable laws. However, no patient shall be denied a service due to inability to pay.

All revenues directly generated by an Attachment(s) supported activity or earned only as a result of the Attachment(s) during the term of the Attachment(s) are considered program income. Program income will be used by PERFORMING AGENCY to further the program objectives of the state/federal statute under which the Attachment(s) was made, and it shall be spent on the same project in which it was generated. PERFORMING AGENCY shall identify and report this income utilizing the forms and time frames specified in the Reports Article, General Provisions or the Special Provisions of the Attachment.

Under a cost reimbursement budget arrangement, PERFORMING AGENCY shall utilize one of the following methods for applying program income:

- Additive method - add the program income to the funds already committed to the project by both parties.
- Deductive method - deduct the program income from the total allowable costs to determine the net allowable costs.

PERFORMING AGENCY shall expend program income during the Attachment term in which it is earned, and may not carry forward to the succeeding term. Program income not expended in the term in which it is earned shall be refunded to the RECEIVING AGENCY.

Under a unit cost budget arrangement, PERFORMING AGENCY shall use program income to provide additional client services. Any program income not used to provide additional client services shall be deducted from PERFORMING AGENCY'S total final billing to RECEIVING AGENCY at the end of the Attachment term.

RECEIVING AGENCY may base future funding levels, in part, upon PERFORMING AGENCY'S proficiency in identifying, billing, collecting, and reporting program income and utilizing it for the purposes and conditions of the applicable Attachment(s).

**Child Abuse Reporting Requirements**

[PERFORMING AGENCY is required to comply with this article only as related to services provided under the following Attachments: Human Immunodeficiency Virus and Sexually Transmitted Diseases (all *direct client care services for HIV and other sexually transmitted diseases funded under the Ryan White CARE Act Title II or general revenue*), *Title V Family Planning (ACFH/FEE-FP, Title X Family Planning (BWH/TITLE X), Title XX Family Planning (BWH/TTLXX), Primary Health Care (ACFH/PHC), Title V Maternal and Child Health (ACFH/FEE), Special Supplemental Nutrition Program for Women, Infants, and Children (BNS/WIC-CARD, and the Services Delivery Integration project (SDI/FFS) Attachments), Title X and Title XX (Family Planning), Primary Health Care, Title V Maternal and Child Health (Fee for service), and Bureau of Nutrition Services/Cards (WIC).*] PERFORMING AGENCY and each of its subrecipients shall make a good faith effort to comply with child abuse reporting guidelines and requirements in Chapter 261 of the Texas Family Code relating to investigations of reports of child abuse and neglect. PERFORMING AGENCY and each of its subrecipients shall develop, implement and enforce a written policy that includes at a minimum the TDH Child Abuse Screening, Documenting, and Reporting Policy for Contractors/Providers and train all staff on reporting requirements. PERFORMING AGENCY and its subrecipients shall use the Checklist for TDH Monitoring as required by RECEIVING AGENCY. (The policy and checklist are available at each of the above-referenced programs' websites.)

**Consent to Treatment for Minors**

If PERFORMING AGENCY provides medical, dental, psychological or surgical treatment to a minor under this contract, either directly or through contracts with subrecipients, the treatment to a minor shall be provided only if consent to treatment is obtained pursuant to Chapter 32 of the Texas Family Code relating to consent to treatment of a child by a non-parent or child. If requirements of federal law relating to consent directly conflict with Chapter 32 of the Family Code, federal law shall supersede state law.

**Confidentiality of Protected Health Information**

PERFORMING AGENCY is required to comply with state and federal laws relating to the privacy and confidentiality of patient and client records that contain protected health information, or other information made confidential by law.

PERFORMING AGENCY is required to disclose protected health information of patients or clients provided services funded through this contract to RECEIVING AGENCY upon request, or as otherwise required in other contract provisions.

RECEIVING AGENCY is authorized to request, collect and receive protected health information under this contract, without the consent of the individual to whom the protected health information relates, for funding, payment and administration of the grant program.

RECEIVING AGENCY is also authorized to request, collect and receive protected health information under this contract, without the consent of the individual to whom the protected health information relates, under exceptions to state confidentiality laws and federal privacy laws, including the Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Standards adopted to implement HIPAA at 45 CFR Parts 160 and 164, at §164.512, and Occupations Code, Chapter 159, at §§159.003 and 159.004.

PERFORMING AGENCY must maintain patient and client records in compliance with state laws relating to the security and retention of medical or patient records. RECEIVING AGENCY may require PERFORMING AGENCY to transfer original or copies of patient and client records to another entity, without the consent or authorization of the patient or client, upon termination of this contract, or if the care and treatment of the individual patient or client is transferred to another entity.

If providing direct client care, services, or programs, PERFORMING AGENCY shall implement RECEIVING AGENCY'S policies based on the model HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome) workplace guidelines, and PERFORMING AGENCY shall educate employees and clients concerning HIV and its related conditions, including AIDS, in accordance with the Health and Safety Code, 85.112-114.

**Sanctions**

RECEIVING AGENCY may impose sanctions for any breach of this contract and will monitor PERFORMING AGENCY for both programmatic and financial compliance. RECEIVING AGENCY may, at its own discretion, impose one or more sanctions for each item of noncompliance and will determine sanctions on a case-by-case basis. A state or federal statute, rule, regulation, or federal guideline will prevail over the provisions of this Article unless the statute, rule, regulation, or guideline can be read together with the provision(s) of this Article to give effect to both.

RECEIVING AGENCY may:

- A. Terminate all or a part of this contract. Termination is the permanent withdrawal of PERFORMING AGENCY'S authority to obligate previously awarded funds before that authority would otherwise expire or the voluntary relinquishment by PERFORMING AGENCY of the authority to obligate previously awarded funds. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY after termination of an award are not allowable unless expressly authorized by the notice of

termination. Termination does not include: (1) withdrawal of funds awarded on the basis of PERFORMING AGENCY'S underestimate of the unobligated balance in a prior period; (2) withdrawal of the unobligated balance as of the expiration of a contract; (3) refusal to extend a contract or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a contract upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception;

- B. Suspend all or part of this contract. Suspension is, depending on the context, either (1) the temporary withdrawal of PERFORMING AGENCY'S authority to obligate funds pending corrective action by PERFORMING AGENCY or its subrecipient(s) or pending a decision to terminate or amend the contract, or (2) an action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in contract transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue. PERFORMING AGENCY costs resulting from obligations incurred by PERFORMING AGENCY during a suspension are not allowable unless expressly authorized by the notice of suspension;
- C. Disallow (deny both use of funds and matching credit for) all or part of the activities or action not in compliance;
- D. Temporarily withhold cash payments. Temporarily withholding cash payments means the temporary withholding of advances or reimbursements to PERFORMING AGENCY or its subrecipient(s) for proper charges or obligations incurred, pending resolution of issues of noncompliance with contract conditions or indebtedness to the United States or to the State of Texas;
- E. Permanently withhold cash payments. Permanent withholding of cash payments means that RECEIVING AGENCY retains funds billed by PERFORMING AGENCY or its subrecipient(s) for a) unallowable, undocumented, disputed, inaccurate, improper, or erroneous claims; b) failure to comply with contract provisions; or c) indebtedness to the United States or to the State of Texas;
- F. Deny contract renewal or future contract awards to a PERFORMING AGENCY;
- G. Delay contract execution with PERFORMING AGENCY while other imposed or proposed sanctions are pending resolution;
- H. Place PERFORMING AGENCY on probation. Probation means that PERFORMING AGENCY will be placed on accelerated monitoring for a period not to exceed six months at which time items of noncompliance must be resolved or substantial improvement shown by PERFORMING AGENCY;
- I. Conduct accelerated monitoring of PERFORMING AGENCY. Accelerated monitoring means more frequent or more extensive monitoring will be performed by RECEIVING AGENCY than would routinely be accomplished;
- J. Require PERFORMING AGENCY to obtain technical or managerial assistance;
- K. Disallow requests for reimbursement by disapproving costs or fees submitted for payment or reimbursement by PERFORMING AGENCY;
- L. Establish additional prior approvals for expenditure of funds by PERFORMING AGENCY;
- M. Require additional, more detailed, financial and/or programmatic reports to be submitted by PERFORMING AGENCY;
- N. Demand repayment from PERFORMING AGENCY;
- O. Reduce the funding amount for failure to achieve or maintain the proposed level of service, to expend funds appropriately and at a rate which will make full use of the award, or to provide services as set out in the Attachment; and

P. Impose other remedies provided by law.

RECEIVING AGENCY will formally notify PERFORMING AGENCY in writing when a sanction is imposed (with the exception of accelerated monitoring, which may be unannounced), stating the nature of the sanction(s), the reasons for imposing them, the corrective actions which shall be taken before they will be removed and the time allowed for completing the corrective actions, and the method, if any, of requesting reconsideration of the sanctions imposed. PERFORMING AGENCY is required to file, within fifteen (15) days of receipt of notice, a written response to RECEIVING AGENCY'S program/division that sent the notice, acknowledging receipt of such notice and stating how PERFORMING AGENCY shall correct the noncompliance or demonstrating in writing that the findings on which the sanctions are based are either invalid or do not warrant the sanction(s). If RECEIVING AGENCY determines that a sanction is warranted, and unless the sanction is subject to review (see Sanction Review Article, below), RECEIVING AGENCY'S decision is final and PERFORMING AGENCY shall take corrective action.

In an emergency, RECEIVING AGENCY may immediately terminate or suspend all or part of this contract, temporarily or permanently withhold cash payments, deny contract renewal or future contract awards, or delay contract execution by delivering written notice to a PERFORMING AGENCY, by any verifiable method, stating the reason for the emergency action.

An "emergency" is defined as the following:

- PERFORMING AGENCY is noncompliant and the noncompliance has a direct adverse impact on the public or client health or safety. The direct adverse impact may be programmatic or financial, impacting health or safety by failing to provide services, providing inadequate services, providing unnecessary services, or utilizing resources so that the public or clients do not receive the benefits contemplated by the scope of work or performance measures,
- PERFORMING AGENCY fails to achieve a performance measure,
- PERFORMING AGENCY is reimbursed or requesting reimbursement for expenditures which are not in accordance with applicable federal or state laws and regulations or the provisions of this contract, or
- PERFORMING AGENCY is expending funds inappropriately.

Whether PERFORMING AGENCY'S conduct or inaction is an emergency will be determined by RECEIVING AGENCY on a case-by-case basis and shall be based upon the egregious nature of the noncompliance or conduct.

### **Sanction Review**

PERFORMING AGENCY may request a review of the imposition of the following sanctions: termination of all or part of this contract, suspension of all or part of this contract, permanent withholding of cash payments, reduction of contract funding or other contract amendment resulting from noncompliance, and denial of contract renewal or future contract awards.

PERFORMING AGENCY shall make the request for review in writing to RECEIVING AGENCY within fifteen (15) days from the date of notification by providing written notice of the dispute to the person who signed the notification.

PERFORMING AGENCY'S notice shall contain the following: (1) a copy of the letter from RECEIVING AGENCY notifying PERFORMING AGENCY of the sanction; (2) a specific description of each act that is the basis for the dispute; (3) the grounds upon which PERFORMING AGENCY bases the complaint; (4) an identification of the issue or issues to be resolved; (5) a precise statement of the relevant facts; (6) any documentation in support of PERFORMING AGENCY'S position; and (7) a statement and authorities in support of PERFORMING AGENCY'S position.

Evidence that PERFORMING AGENCY properly notified RECEIVING AGENCY consists of any of the following documents: (1) signature on delivery card; (2) confirmation of a facsimile to the correct telephone number; or (3) signed acknowledgment of delivery.

RECEIVING AGENCY'S representative will schedule a meeting or a conference call to attempt to resolve the issues in dispute. If the dispute is resolved, any resolution will be in writing and will be signed by all parties. If the dispute

is not resolved, RECEIVING AGENCY'S representative will notify PERFORMING AGENCY in writing. RECEIVING AGENCY will appoint a reviewer(s), who will review the information, who may permit or require additional information and who may grant, deny, or modify all relief requested in the written notice of dispute. The reviewer(s)'s decision will be in writing and will contain a discussion of the reason for the decision and the remedial action, if any. The reviewer(s) will send copies of the decision to all parties by any verifiable means. The decision of the reviewer(s) is final and is the final action of RECEIVING AGENCY for purposes of further proceedings.

A state statute or rule or a federal statute, regulation or guideline will prevail over the provisions of this Article unless the statute, rule, regulation or guideline can be read together with the provision or provisions of this Article to give effect to both.